

AUG 21 2006

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Applicants:	Patrick C. St. Germain)	
)	
Application No.	10/682,444)	
)	
Filed:	October 9, 2003)	Art Unit: 3721
)	
For:	APPARATUS FOR MAKING)	
	INTERFOLDED PRODUCT)	
)	Atty. Docket No. SSS-106
Examiner:	Sameh H. Tawfik)	

APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Sir:

1. Real Party in Interest

This application is assigned to Specialty Systems Advanced Machinery, Inc.

2. Related Appeals and Interferences

None.

3. Status of All Claims

Claims 1-10 have been cancelled. Claims 11-15 are pending. Claims 11-15 are under a Final Rejection, and are on appeal.

Claims 11-15 are presented in the CLAIMS APPENDIX hereto. Claim 11 is the sole independent claim.

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4. Status of All Amendments Filed Subsequent to Final Rejection

No claim amendments were filed subsequent to Final Rejection in the present Appeal.

5. Concise Summary of the Claimed Subject Matter

The claimed subject matter is directed to an apparatus for interfolding at least two sheets of material so as to form a web of interfolded sheets. Illustrative apparatus is shown schematically in FIG. 4.

At least two dispensers such as parallel folding boards 14 and 34 receive webs 16 and 36 (page 4, line 16). These webs are first folded longitudinally so as to produce respective folded sheet materials 18 and 38 (page 4, lines, 16-17). The folded sheet materials are then passed through folding rolls 46 and 48 to produce an interfolded product 50 (page 4, lines 17-22).

Claim 11 is the sole independent claim that defines the apparatus. (FIG. 4; page 4, lines 15-22).

Claim 12 is dependent on claim 11 and defines an apparatus where the dispensers provide sheets that have a plurality of longitudinally extending fold lines and folds that provide a double "c" shaped fold (FIG. 3 (a); page 3, line 29 to page 4, line 2).

Claim 13 is dependent on claim 11 and defines an apparatus where the dispensers provide sheets that include a plurality of spaced-apart transversely extending perforation lines (page 4, lines 8-14).

Claim 14 is dependent on claim 11 and defines an apparatus that includes knife rolls for clean cutting interfolded sheets of material (FIG. 4; page 4, lines 23-24).

Claim 15 is dependent on claim 11 and defines an apparatus that includes perforating rolls for providing perforations in the interfolded material (FIG. 4; page 4, lines 17-19).

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6. Grounds of Rejection to be Reviewed on Appeal

Claims 11-15 are rejected under 35 U.S.C. 103(a) as unpatentable over Stemmler (U.S. Patent No. 5,088,707) in view of Hermach (U.S. Patent No. 3,942,782).

7. Argument

The obviousness rejection based on Stemmler in view of Hermach clearly is not warranted, and is not supported by the record. The applied references are not combinable. Prima facie obviousness is not established by the aforementioned two references.

A. Stemmler Does NOT Disclose Apparatus for Interfolding Sheets of Material That Include At Least One Longitudinal Fold Line and At Least One Fold

At page 2, 4th full paragraph, of the Office Action dated 23 February 2006 the Examiner concedes that the sheets disclosed by Stemmler lack the longitudinal fold line as well as the fold. Stemmler teaches very different expedients. Stemmler teaches the production of numerically correct stacks of interfolded sheets, an event that takes place downstream from the folding rolls. One of ordinary skill would not have had any motivation whatsoever to look upstream of the folding rolls when seeking to improve upon Stemmler's apparatus.

The shortcomings of Stemmler as a reference against the appealed claims is not cured by Hermach. This particular reference merely shows an apparatus for folding (not interfolding) newspaper pages.

B. Stemmler and Hermach Are Not Combinable

Hermach describes an apparatus for folding newspapers. That has nothing to do with interfolding webs of material. There is no reason whatsoever to interfold a newspaper, thereby making it more difficult to unfold for reading. One of ordinary skill most certainly would not have done so. Besides, the mechanical elements of Hermach's apparatus are vastly different from those of Stemmler (c.f. for example, FIG. 1 of Stemmler with FIG. 2 of Hermach).

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C. It Is Inappropriate for the Examiner to Take Official Notice of a Fact Purportedly Constituting the State of the Art

The Examiner concedes that Hermach does not disclose a double fold "c" shaped fold as called for in claim 12, but takes official notice that such fold type is old, well known, and available in the art. This is improper, and cannot sustain rejection of claim 12.

A fact purportedly constituting the state of the art is a technical fact. Such facts are subject to the possibility of rational disagreement among reasonable individuals, may not be officially noticed, *In re Eynde*, 178 U.S.P.Q. 470, 474 (C.C.P.A. 1974), and may not provide the totality of evidence to support a rejection, *In re Ahlert*, 165 U.S.P.Q. 418, 421 (C.C.P.A. 1970). There is no proper evidence of record that supports the rejection of claim 12.

The timing of the official notice is improper as well. Here official notice was taken for the first time when issuing a Final Rejection. Such timing deprives the applicant of a full opportunity to address this issue. Applicant did request the Examiner to provide appropriate evidence to substantiate his contention that double fold "c" shaped fold type is old, well known, and available in the art. The Examiner failed to do so, however.

D. The Rejection of Claim 13 Is Not Supported by the Record

Regarding claim 13, the Examiner merely states that Stemmler's sheets of material include a plurality of spaced-apart, transversely expending perforation lines. That is not enough to support a rejection, especially in view of the Examiner's admission that the sheets disclosed by Stemmler lack the longitudinal fold line as well as the fold. The patentability of each claim must be evaluated in its entirety. That has not been done in this instance.

E. The Rejection of Claims 14 and 15 Is Not Supported by the Record

The mere fact that Stemmler discloses use of knife rolls or perforations in his apparatus does not vitiate the patentability of these particular claims, especially in view of the

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CLAIMS APPENDIX

Claim 11. An apparatus for interfolding at least two sheets of material for forming a web of interfolded sheets of material, the apparatus comprising:

- a) at least two dispensers providing sheets of material that include at least one longitudinally extending fold line and at least one fold respectively; and
- b) an interfolder through which the sheet material from each of the dispensers is fed for interfolding the respective sheets of material together and forming the web of the interfolded sheets of material.

Claim 12. The apparatus of claim 11 wherein the sheets of material respectively include a plurality of longitudinally extending fold lines and a plurality of folds together defining sheets of material incorporating a double "c" shaped fold.

Claim 13. The apparatus of claim 11 wherein the sheets of material respectively include a plurality of spaced-apart transversely extending perforation lines.

Claim 14. The apparatus of claim 11 which includes knife rolls for clean cutting the interfolded sheets of material.

Claim 15. The apparatus of claim 11 which includes perforating rolls perforating the interfolded sheets of material.

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EVIDENCE APPENDIX

None.

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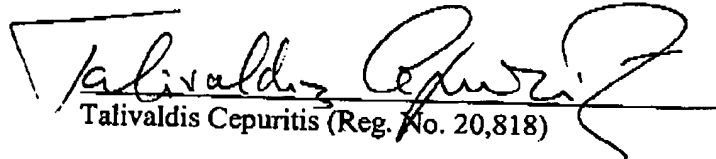
RELATED PROCEEDINGS APPENDIX

None.

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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this APPEAL BRIEF and Appendices is being transmitted
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Examiner's aforementioned admission. The apparatus of Stemmler is different and the sheets to be processed are different as well.

8. Conclusion

The Stemmler and Hermach references are not combinable to make a prima facie case of obviousness. One of ordinary skill would not have even attempted to interfold a newspaper. The selection of Stemmler and Hermach as references in this case clearly has been arrived at by impermissible reliance on the applicant's own specification for guidance. In any event, even the attempted combination of references would not have made the present invention obvious to one of ordinary skill in the art.

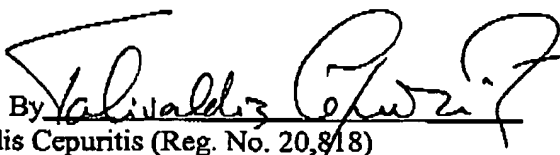
The Final Rejection should be reversed.

Please charge the Appeal Brief fee of \$250.00 to our Deposit Account No. 15-0508.

Kindly charge any additional fees or credit any overpayment concerning this matter to our Deposit Account No. 15-0508.

Respectfully submitted,

August 21, 2006

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